



Tax alert: Clarification on applicability of damages under Employees' Provident Funds Act

12 September 2024

The Ministry of Labour and Employment ('MLE') had, vide notification dated 14 June 2024, reduced the rate of damages payable by employers defaulting in the payment of provident fund, pension, and insurance contributions. In furtherance to the same, MLE has now issued a notification dated 28 August 2024 clarifying the period from which the new rate of damages will be levied.

In a nutshell



The Ministry of Labour and Employment ('MLE') had rationalised and simplified the damages payable by defaulting employers towards provident fund, pension and Employees' Deposit Linked Insurance contributions.



Based on the notification dated 14 June 2024, the rate of damages payable was kept uniform @1% per month of default or part thereof.



In the latest notification issued on 28 August 2024, it has been clarified that the reduced rate of damages shall come in to force prospectively from the date of its publication in the Official Gazette i.e. **14 June 2024**



Further it has been clarified that the damages in case of defaults made up to 13 June 2024 will be recovered based on the then prevailing provisions.



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Salient features of the notification:

- As per the amendment made by MLE by way of the notification dated 14 June 2024, damages for default in the payment of any contributions to the three schemes (i.e. The Employees' Provident Funds Scheme, 1952, The Employees' Pension Scheme, 1995 and The Employees' Deposit Linked Insurance Scheme, 1976) or transfer of accumulations as specified under the EPF Act, in the payment of any charges payable under any other provisions of the EPF Act or Schemes, will be recovered at the rate of 1% per month or part thereof across the three schemes.
- The latest notification issued by the MLE further reiterates that the revised rate of damages will be effective prospectively i.e. from the date of its notification in the Official Gazette i.e. 14 June 2024. Hence the defaults made from 14 June 2024 will now attract revised rate of 1%.
- Further the notification also clarifies that any defaults made up to 13 June 2024 i.e. in the payment of contributions, charges payable, transfer of accumulations under the Act or schemes framed thereunder are to be levied and recovered in accordance with the then prevailing rates¹. The same has been reproduced below.

SI No	Period of default	Damages payable (Percentage of arrears per annum)
1	Less than 2 months	5%
2	2 months and above but less than 4 months	10%
3	4 months and above but less than 6 months	15%
4	6 month and above	25%

- With this change, one may note that the defaulting employer may end up paying higher penal damages if the period of default is less than 4 months. However, if the period of default is 4 months or more, the damages would be on the lower side.

Comments:

The current notification is a welcome move as it provides additional clarity to establishments having defaults prior to notification date in computing the damages payable.

¹ as provided under Paragraph 32A(1), Paragraph 5(1) and Paragraph 8A of The Employees' Provident Funds Scheme, 1952, The Employees' Pension Scheme, 1995 and The Employees' Deposit Linked Insurance Scheme, 1976 respectively

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